## REMARKS

In the outstanding Office Action mailed December 7, 2007, (hereinafter, "Office Action"), the rejected claims 1, 3, 5, and 6 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2004/0264454 to Rajkumar et al (hereinafter, "*Rajkumar*") in view of U.S. Patent Publication No. 2002/0090024 to Tan (hereinafter, "*Tan*") and U.S. Patent Publication No. 2002/0013926 to Kim et al. (hereinafter, "*Kim*"); rejected claim 2 under 35 U.S.C. § 103(a) as being unpatentable over *Rajkumar* in view of *Tan*, *Kim*, and U.S. Patent No. 6,778,612 to Lozano et al (hereinafter, "*Lozano*"); rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over *Rajkumar* in view of *Tan*, *Kim*, and U.S. Patent No. 6,490,461 to Müller (hereinafter, "*Müller*"); rejected claims 8 and 11 under 35 U.S.C. § 103(a) as being unpatentable over *Kim* in view of *Rajkumar* and *Tan*; rejected claim 9 under 35 U.S.C. § 103(a) as being unpatentable over *Kim* in view of *Rajkumar*, *Tan*, and *Lozano*; rejected claim 12 under 35 U.S.C. § 103(a) as being unpatentable over *Kim* in view of *Rajkumar*, *Tan*, and *Müller*; rejected claims 13, 14, 17, and 18 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0041640 to Le Bars et al. (hereinafter, "*Le Bars*") in view of *Tan* and *Kim*; rejected claim 15 under 35 U.S.C. § 103(a) as being unpatentable over *Le Bars* in view of *Tan*, *Kim*, and *Lozano*; rejected claim 19 under 35 U.S.C. § 103(a) as being unpatentable over *Kim* in view of *Le Bars* and *Tan*; rejected claim 20 under 35 U.S.C. § 103(a) as being unpatentable over *Kim* in view of *Le Bars*, *Tan*, and *Lozano*; and rejected claim 21 under 35 U.S.C. § 103(a) as being unpatentable over *Kim* in view of *Le Bars*, *Tan*, and *Müller*.

By this amendment, Applicants have amended claims 1-3, 5-6, 8-9, 11, 13-15, and 18, to improve form and not for reasons related to patentability. No new matter has been added. Accordingly, claims 1-3, 5-9, 11-15, and 17-21 remain pending.

In light of the foregoing amendments and based on the arguments presented below, Applicants respectfully traverse the rejections of claims under 35 U.S.C. § 103(a), and request allowance of pending claims 1-3, 5-9, 11-15, and 17-21.

## I. Examiner's Response to Arguments

As a preliminary matter, Applicants seek to clarify an apparent misstatement in the Examiner's Response to Arguments. Specifically, the Examiner states that "applicant admits that Kim et al . . . [discloses] TFCI bits and that one of ordinary skill [in] the art would be motivated to use the TFCI bits in order to minimize frame error and hence, all the limitations of the claims are addressed by combining the teachings of Kim with teachings of other references as shown below." Office Action, p. 3 (emphasis added).

Applicants made no such admission in the Reply to Office Action filed September 4, 2007, (hereinafter, "*Reply*"). To the contrary, in the *Reply*, Applicants specifically and clearly stated that "the Office Action's stated motivation is **neither suggested by the references themselves nor in the knowledge generally available to one of ordinary skill in the art**." *Reply*, p. 17 (emphasis added). Applicants further asserted in the *Reply* that "the [Examiner's] stated motivation is nothing more than a declaration that TFCI bits exist and that they may be used to minimize frame error rate." *Id.* at pp. 17-18.

Accordingly, the Examiner's allegation of admissions by Applicants is factually incorrect, and Applicants respectfully request that the Examiner correct this factual misstatement in any forthcoming correspondence from the Office.

## II. Rejections Under 35 U.S.C. § 103(a)

Applicants respectfully traverse the rejections of claim 1, 3, 5-9, 11-15, and 17-21 under 35 U.S.C. § 103(a) as being unpatentable over the cited art because a *prima facie* case of obviousness has not been established.

The key to supporting any rejection under 35 U.S.C. § 103(a) is the clear articulation of the reasons why the claimed invention would have been obvious. Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. *See M.P.E.P.* § 2141, 8th Ed., Rev. 6 (Sept. 2007). "A conclusion of obviousness requires that the references relied upon be enabling in that it put the public in possession of the claimed invention." *M.P.E.P.* § 2145. Furthermore, "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" at the time the invention was made. *M.P.E.P.* § 2143.01(III) (internal citations omitted). In addition, when "determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." *M.P.E.P.* § 2141.02(I) (internal citations omitted) (emphasis in original).

In this application, a *prima facie* case of obviousness has not been established because, among other things, the cited references, taken alone or in combination, do not teach or suggest each and every feature of Applicants' claims. For at least this reason, Applicants respectfully submit that claims 1, 3, 5-9, 11-15, and 17-21 are allowable over the cited art.

### A. Claims 1, 3, 5, and 6

Applicants respectfully submit that claims 1, 3, 5, and 6 are allowable because neither *Rajmukar*, nor *Tan*, nor *Kim*, taken alone or in any combination, teach or suggest, *inter alia*, "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit," as recited in amended independent claim 1.

#### i. *Rajkumar*

*Rajkumar* discloses a "method and equipment . . . used to transmit and/or receive time delay-intolerant information over a communication system." *Rajkumar*, Abstract. According to *Rajkumar*, "[a] plurality of packets representing time delay-intolerant information is combined to form an aggregate packet." *Id.* at ¶ 0018. In *Rajkumar*, "[a]ggregate packet size is determined from negotiations with a corresponding receiver equipment and user service requirements." *Id.* at ¶ 0030. "The aggregate packet size can be determined statically or dynamically or both at different times." *Id.*

The Office Action states at page 5 that "[t]he aggregated packet is interpreted as claimed information bits because it is, in fact, a packet and packets inherently comprise information bits." Office Action, p. 5. While Applicants do not concede the Examiner's statement, Applicants respectfully point out that the Examiner's interpretation and application of *Rajkumar* does not address the recitations of Applicants' amended independent claim 1. Specifically, the Examiner appears to be incorrectly asserting that negotiation of a size of an entire aggregated packet is equivalent to "negotiating a number of transport format combination index (TFCI) information bits included in a packet," as recited in amended independent claim 1. However, it is not equivalent.

*Rajkumar* clearly states that the aggregated packet is a combination of a number of other packets, and it is the overall size of this combination of packets which is negotiated, not the number of [TFCI] information bits included in the packet. Indeed, the Examiner acknowledges at least this failure of *Rajkumar*, stating in the rejection of claim 1 that "Rajkumar . . . fails to explicitly disclose . . . the transport format combination index (TFCI) encoded information bits." Office Action, p. 5. And, if *Rajkumar* fails to disclose TFCI information bits, it is impossible for *Rajkumar* to disclose "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit," as recited in amended independent claim 1.

Thus, for at least these reasons, Applicants submit that *Rajkumar* fails to teach or suggest all the elements of Applicants' amended independent claim 1, and claims 3, 5, and 6 that depend therefrom.

### ii. *Rajkumar* and *Tan*

*Tan* does not cure the deficiencies set forth above, including the failure of *Rajkumar* to disclose or suggest, *inter alia*, "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit," as recited in amended independent claim 1.

Indeed, the Examiner does not rely on *Tan* for this teaching. Instead, *Tan* discloses a system in which "[t]he performance of code division multiple access (CDMA) technology is enhanced through the use of a new class of non-linear block codes during CDMA signal coding (and decoding)." *Tan*, ¶ 0034. Thus, *Tan* and *Rajkumar* fail to teach or suggest, *inter alia*, "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit," as recited in amended independent claim 1.

For at least these reasons, Applicants submit that neither *Rajkumar*, nor *Tan,* nor any combination thereof, teach or suggest all the elements of Applicants' amended independent claim 1, and claims 3, 5, and 6 that depend therefrom.

### *iii.* *Rajkumar*, *Tan*, and *Kim*

*Kim* does not cure the deficiencies set forth above, including the failure of *Rajkumar* and *Tan* to disclose or suggest, *inter alia*, "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit," as recited in amended independent claim 1.

Instead, *Kim* discloses "an apparatus and method for a TFCI (Transport Format Combination Indicator) code generator in a CDMA mobile communication system . . . ." *Kim*, ¶ 0003. The Office Action alleges that "Kim shows communication method between a base station and a mobile unit (Paragraph [0007]) comprising: - a transport format combination index (TFCI) encoded information bits transmitted between the base station and the mobile unit (Paragraph [0003])." Office Action, p. 6.

The Examiner incorrectly asserts that the *Kim* reference can be combined with the *Rajkumar* reference to disclose the recitations of amended independent claim 1. Specifically, the Examiner suggests that *Kim* and *Rajkumar* can be combined to teach "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit," as recited in amended independent claim 1. However, referring to the paragraph cited by the Examiner, *Kim* discloses that "the TFCI bits are encoded to a code of length 48 before transmission." *Kim*, ¶ 0007. That is, *Kim* appears to teach that the TFCI bits are encoded to a code of a predetermined, static length.

Thus, the combination of *Rajkumar*, *Tan*, and *Kim* would not result in "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit," as recited in amended independent claim 1. Instead, the combination would result in the number of packets in an aggregation of packets being negotiated, while the TFCI bits included in the packets are encoded to a code of fixed length.

Moreover, the plain language of *Kim* teaches away from the combination of *Kim* with *Rajkumar*. That is, by stating that the "the TFCI bits are encoded to a code of length 48 before transmission," *Kim* precludes the possibility that the number of TFCI bits are negotiated. *Kim*, ¶ 0007.

In addition to the failure of *Rajkumar*, *Tan*, and *Kim* to teach or suggest all the claim limitations, either alone or in combination, there is no motivation to combine the references. Further, the Office Action's stated motivation is neither suggested by the references themselves nor in the knowledge generally available to one of ordinary skill in the art.

As discussed above, *Rajkumar* negotiates a number of packets to be sent between nodes in a communication system, and there is no suggestion or teaching within *Rajkumar* to negotiate a number of bits within the packets, let alone "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit," as recited in Applicants' amended independent claim 1.

In contrast, *Kim* discloses TFCI bits encoded to a predetermined, static length. The Office Action's assertion, at page 6, that "it would have been obvious to a person of ordinary skill in the art to use Kim's method of using TFCI bits as the information bits of Rajkumar because it minimizes frame error rate of the error correction encoder," has no bearing on the combination of *Rajkumar*, *Tan*, and *Kim*. As stated previously, the Examiner's stated motivation is nothing more than a declaration that TFCI bits exist and that they may be used to minimize frame error rate.

Thus, for at least these reasons, Applicants submit that neither *Rajkumar*, nor *Tan,* nor *Kim*, nor any combination thereof, teach or suggest all the elements of Applicants' amended independent claim 1. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of amended independent claim 1. In addition, claims 3, 5, and 6 are allowable due at least to their dependence upon allowable independent claim 1.

### **B. Claim 2**

Claim 2 depends from independent claim 1, and thus requires a combination including, *inter alia*, "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit." As discussed above, *Rajkumar*, *Tan*, and *Kim* fail to disclose or suggest at least this element of claim 1.

In the rejection of claim 2, the Examiner alleges that *Lozano* teaches, for example, "negotiation of data rate from time to time . . . ." Office Action, p. 9. Despite this characterization, which Applicants do not concede, the reference fails to cure the deficiencies of *Rajkumar*, *Tan*, and *Kim*, as discussed above. That is, *Lozano* also fails to teach or suggest at least "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit," as recited in amended independent claim 1, from which claim 2 depends.

Accordingly, because none of *Rajkumar*, *Tan*, *Kim,* and *Lozano* teach or suggest each and every recitation of claim 2, the rejection of this claim is legally deficient. Therefore, Applicants respectfully request reconsideration and withdrawal of the § 103(a) rejection, and the allowance of claim 2.

### C. Claim 7

Claim 7 depends from independent claim 1, and thus requires a combination including, *inter alia*, "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit." As discussed above, *Rajkumar*, *Tan*, and *Kim* fail to disclose or suggest at least this element of claim 1.

In the rejection of claim 7, the Examiner alleges that *Müller* shows, for example, "communication between a base station and mobile station as a WCDMA implementation . . . ." Office Action, p. 9. Despite this characterization, which Applicants do not concede, the reference fails to cure the deficiencies of *Rajkumar*, *Tan*, and *Kim*, as discussed above. That is, *Müller* also fails to teach or suggest at least "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit," as recited in amended independent claim 1, from which claim 7 depends.

Accordingly, because none of *Rajkumar*, *Tan*, *Kim,* and *Müller* teach or suggest each and every recitation of claim 7, the rejection of this claim is legally deficient. Therefore, Applicants respectfully request reconsideration and withdrawal of the § 103(a) rejection, and the allowance of claim 7.

### D. Claims 8 and 11

Applicants respectfully submit that claims 8 and 11 are allowable because neither *Kim*, nor *Rajkumar*, nor *Tan*, taken alone or in combination, teach or suggest, *inter alia*, "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit," as recited in amended independent claim 8.

#### i. *Kim*

As discussed above in connection with claim 1, *Kim* fails to disclose or suggest, *inter alia*, "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit," as recited in amended independent claim 8. Instead, *Kim* discloses "an apparatus and method for a TFCI (Transport Format Combination Indicator) code generator in a CDMA mobile communication system . . . ." *Kim*, ¶ 0003.

The Office Action alleges that "Kim shows a communication method (Paragraph [0007]) comprising . . . information bits that are transport format combination index bits [ ] (TFCI) (Paragraph [0003])." Office Action, p. 10. However, the Examiner acknowledges that "Kim . . . fails to disclose the step of negotiation of number of bits . . . ." Office Action, p. 11.

While the Examiner asserts that the *Kim* reference can be combined with the *Rajkumar* reference to disclose the recitations of amended independent claim 8, this is incorrect. *Rajkumar* does not overcome the deficiencies of *Kim*, as discussed above, and the failure of *Kim* to teach or suggest, *inter alia*, "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit," as recited in amended independent claim 8.

The Examiner states that "Kim shows . . . information bits that are transport format combination index bits [ ] (TFCI) . . . ," and "Rajkumar shows . . . negotiating a number of bits of information bits included in a packet . . . ." Office Action, pp. 10-11. The Examiner attempts to support the combination by stating that "[t]he aggregated packet [of Rajkumar] is interpreted as claimed packet because it is, in fact, a packet and packets inherently comprise information bits." Office Action, p. 11.

However, even if the Examiner's assertions with respect to *Rajkumar* are correct, which Applicants do not concede, *Kim* discloses that "the TFCI bits are encoded to a code of length 48 before transmission." *Kim*, ¶ 0007. That is, not only does Kim . . . fail[] to disclose the step of negotiation of number of bits . . . (Office Action, p. 11)," but *Kim* specifically teaches that the TFCI bits are encoded to a code of a predetermined, static length.

Thus, the combination of *Kim* and *Rajkumar* would not result in "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit," as recited in amended independent claim 8. Instead, the combination would only result in the aggregation of packets in which the TFCI bits are encoded to a code of fixed length, and where only the number of packets in an aggregation of packets has been negotiated.

In other words, the plain language of *Kim* teaches away from the combination of *Kim* with *Rajkumar*. Again, by stating that the "the TFCI bits are encoded to a code of length 48 before transmission," *Kim* precludes the possibility that the number of TFCI bits are negotiated. *Kim*, ¶ 0007.

*Tan* does not cure the deficiencies set forth above, including the failure of *Kim* and *Rajkumar* to disclose or suggest, *inter alia*, "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit," as recited in amended independent claim 8.

Instead, *Tan* discloses a system in which "[t]he performance of code division multiple access (CDMA) technology is enhanced through the use of a new class of non-linear block codes during CDMA signal coding (and decoding)." *Tan*, ¶ 0034. Thus, *Kim*, *Rajkumar*, and *Tan* fail to teach or suggest, *inter alia*, "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit," as recited in amended independent claim 1.

For at least these reasons, Applicants submit that neither *Kim*, nor *Rajkumar*, nor *Tan,* nor any combination thereof, teach or suggest all the elements of Applicants' amended independent claim 8. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of amended independent claim 8. In addition, claim 11 is allowable due at least to its dependence upon allowable independent claim 8.

### E. Claim 9

Claim 9 depends from independent claim 8 and thus requires a combination including, *inter alia*, “negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit.” As discussed above, *Kim*, *Rajkumar*, and *Tan* fail to disclose or suggest at least this element of claim 8.

In the rejection of claim 9, the Examiner alleges that *Lozano* shows, for example, “negotiation of data rate from time to time . . . .” Office Action, p. 13. Despite this characterization, which Applicants do not concede, *Lozano* fails to cure the deficiencies of *Kim*, *Rajkumar*, and *Tan*, as discussed above. That is, *Lozano* also fails to teach or suggest at least “negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit,” as recited in amended independent claim 8, from which claim 9 depends.

Accordingly, because none of *Kim*, *Rajkumar*, *Tan*, and *Lozano* teach or suggest each and every recitation of claim 9, the rejection of this claim is legally deficient. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and the allowance of claim 9.

### F. Claim 12

Claim 12 depends from independent claim 8 and thus requires a combination including, *inter alia*, “negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit.” As discussed above, *Kim*, *Rajkumar*, and *Tan* fail to disclose or suggest at least this element of claim 8.

In the rejection of claim 12, the Examiner alleges that *Müller* shows, for example, "communication between a base station and mobile station as a WCDMA implementation . . . ." Office Action, p. 14. Despite this characterization, which Applicants do not concede, the reference fails to cure the deficiencies of *Kim*, *Rajkumar*, and *Tan*, as discussed above. That is, *Müller* also fails to teach or suggest at least "negotiating a number of transport format combination index (TFCI) information bits included in a packet between the base station and the mobile unit," as recited in amended independent claim 8, from which claim 12 depends.

Accordingly, because none of *Kim*, *Rajkumar*, *Tan*, and *Müller* teach or suggest each and every recitation of claim 12, the rejection of this claim is legally deficient. Therefore, Applicants respectfully request reconsideration and withdrawal of the § 103(a) rejection, and the allowance of claim 12.

### G. Claims 13, 14, 17, and 18

Applicants respectfully submit that claims 13, 14, 17, and 18 are allowable because neither *Le Bars*, nor *Tan*, nor *Kim*, taken alone or in combination, teach or suggest, *inter alia*, "wherein a number of transport format combination index (TFCI) information bits included in a packet is negotiated between the base station and the mobile unit," as recited in amended independent claim 13.

#### i. *Le Bars*

*Le Bars* fails to teach this recitation of claim 13. Instead, *Le Bars* discloses "a method and device for evaluating the noise associated with turbocodes . . . ." *Le Bars*, ¶ 0001. *Le Bars* states that "[d]ifferent techniques are known for effecting a statistical evaluation of the noise." *Id.* at ¶ 0011. According to *Le Bars*, "[the disclosed] technique is known notably in the field of modems, where it is used for obtaining a negotiation of the bit rate per symbol as a function of the state of the channel." *Id.* at ¶ 0016 (emphasis added).

In the Response to Arguments on page 3 of the Office Action, the Examiner alleges that "bit rate is nothing but the rate at which bits are transmitted i.e. the number of bits to be transmitted per symbol," and then asserts this implies that "Le Bars did indeed disclose the limitations of claims 13 and 19." Office Action, p. 3. To support this allegation, the Examiner states that "a packet is nothing more but a collection of bits" and a "symbol is also a collection of bits and hence can be interpreted as a packet." *Id.*

However, assuming, *arguendo,* that the Examiner's aforementioned statements that 1) a "bit rate is nothing but the rate at which bits are transmitted" and 2) a "symbol is also a collection of bits" are correct, the logical conclusion could only be that "bit rate is nothing but the rate at which [a collection of bits] are transmitted." Office Action, p. 3. In other words, as Applicants stated previously, even if the "size of the symbol" was equivalent to Applicants' "number of information bits," which appears to be the Examiner's assertion, the negotiation of a bit rate per symbol will only result in a change of the rate of transmission of the "collection of bits," and would not affect the size of the transmission.

Moreover, at page 15 of the Office Action, the Examiner alleges that "[a] negotiated of the bit rate per symbol is performed which inherently indicates the number of bits in [ ] the symbol and thus is interpreted as claimed negotiation." Applicants again remind the Examiner that the Office Action must provide rationale or evidence tending to show inherency. *M.P.E.P.* § 2112. "To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Robertson* (citation omitted).

As stated above, *Le Bars* does not disclose the invention as claimed. In addition, the Office Action has not provided any rationale or evidence tending to show inherency. Finally, even if it is possible that *Le Bars* might negotiate a bit rate, it does not necessarily follow that the size of the symbol is negotiated, and therefore such a teaching is not inherent in *Le Bars*.

For at least the reasons stated above, Applicants submit that neither *Le Bars*, nor any obvious variant thereof, teaches or suggests all the elements of Applicants' amended independent claim 13, and claims 14, 17, and 18 that depend therefrom.

### ii. ***Le Bars* and *Tan***

As discussed above in connection with amended independent claim 1, *Tan* discloses a system in which "[t]he performance of code division multiple access (CDMA) technology is enhanced through the use of a new class of non-linear block codes during CDMA signal coding (and decoding)." *Tan*, ¶ 0034.

*Tan* does not cure the deficiencies set forth above, including the failure of *Le Bars* to disclose or suggest, *inter alia*, "wherein a number of transport format combination index (TFCI) information bits included in a packet is negotiated between the base station and the mobile unit," as recited in amended independent claim 13. Indeed, the Examiner does not rely on *Tan* for this teaching.

Thus, for at least this reason, Applicants submit that neither *Le Bars*, nor *Tan*, nor any combination thereof, teach or suggest all the elements of Applicants' amended independent claim 13, and claims 14, 17, and 18 that depend therefrom.

### iii. *Le Bars*, *Tan*, and *Kim*

As discussed above in connection with amended independent claim 1, *Kim* discloses "an apparatus and method for a TFCI (Transport Format Combination Indicator) code generator in a CDMA mobile communication system . . . ." *Kim*, ¶ 0003. *Kim* however does not cure the deficiencies set forth above, including the failure of *Le Bars* and *Tan* to disclose or suggest, *inter alia*, "wherein a number of transport format combination index (TFCI) information bits included in a packet is negotiated between the base station and the mobile unit," as recited in amended independent claim 13.

The Examiner relies on Kim to show "a transport format combination index (TFCI) encoded information bits transmitted between the base station and mobile station . . . ," and then asserts that "it would have been obvious . . . to use Kim's method of using TFCI bits as the information bits of Le Bars . . . ." Office Action, p. 16. However, as discussed above in connection with claims 1 and 8, *Kim* discloses that "the TFCI bits are encoded to a code of length 48 before transmission." *Kim*, ¶ 0007.

That is, not only does the cited art fail to disclose or suggest, "wherein a number of transport format combination index (TFCI) information bits included in a packet is negotiated between the base station and the mobile unit," but *Kim* specifically teaches that the TFCI bits are encoded to a code of a predetermined, static length.

Thus, for at least this reason, Applicants submit that neither *Le Bars*, nor *Tan*, nor *Kim*, nor any combination thereof, teach or suggest all the elements of Applicants' amended independent claim 13. Therefore, Applicants respectfully request reconsideration and withdrawal of the § 103(a) rejection, and allowance of amended independent claim 13. In addition, claims 14, 17, and 18 are allowable due at least to their dependence on allowable amended independent claim 13.

### H. Claim 15

Claim 15 depends from independent claim 13 and thus requires a combination including, *inter alia*, "wherein a number of transport format combination index (TFCI) information bits included in a packet is negotiated between the base station and the mobile unit." As discussed above, *Le Bars*, *Tan*, and *Kim* fail to disclose or suggest at least this element of claim 13.

In the rejection of claim 15, the Examiner alleges that *Lozano* teaches, for example, "negotiation of data rate from time to time . . . ." Office Action, p. 19. Despite this characterization, which Applicants do not concede, *Lozano* fails to cure the deficiencies of *Le Bars*, *Tan*, and *Kim*, as discussed above. That is, *Lozano* also fails to teach or suggest at least "wherein a number of transport format combination index (TFCI) information bits included in a packet is negotiated between the base station and the mobile unit," as recited in amended independent claim 13, from which claim 15 depends.

Accordingly, because none of *Le Bars*, *Tan*, *Kim*, and *Lozano* teach or suggest each and every recitation of claim 15, the rejection of this claim is legally deficient. Therefore, Applicants respectfully request reconsideration and withdrawal of the § 103(a) rejection, and allowance of claim 15.

### I. Claim 19

Applicants respectfully submit that claim 19 is allowable because neither *Kim*, nor *Le Bars*, nor *Tan*, taken alone or in combination, teach or suggest, *inter alia*, "a transport format combination index (TFCI) size negotiated for the encoded information bits for transmission between the base station and the mobile unit," as recited in independent claim 19.

#### i. *Kim*

As discussed above in connection with amended independent claim 1, *Kim* discloses "an apparatus and method for a TFCI (Transport Format Combination Indicator) code generator in a CDMA mobile communication system . . . ." *Kim*, ¶ 0003.

*Kim,* however, does not disclose or suggest, *inter alia*, "a transport format combination index (TFCI) size negotiated for the encoded information bits for transmission between the base station and the mobile unit," as recited in independent claim 19. Instead, *Kim* discloses that "the TFCI bits are encoded to a code of length 48 before transmission." Kim, ¶ 0007. Indeed, the Office Action acknowledges this failure of Kim, stating that "Kim also fails to mention the negotiation of size step . . . ." Office Action, page 20.

Thus, for at least this reason, Applicants submit that neither *Kim*, nor any obvious variant thereof, teaches or suggests all the elements of Applicants' independent claim 19.

#### ii. *Kim* and *Le Bars*

*Le Bars* does not cure the deficiencies set forth above, including the failure of *Kim* to disclose or suggest, *inter alia*, "a transport format combination index (TFCI) size negotiated for the encoded information bits for transmission between the base station and the mobile unit," as recited in independent claim 19.

Instead, *Le Bars* states that "[d]ifferent techniques are known for effecting a statistical evaluation of the noise." *Le Bars* at ¶ 0011. According to *Le Bars,* "[the disclosed] technique is known notably in the field of modems, where it is used for obtaining a negotiation of the bit rate per symbol as a function of the state of the channel." *Id.* at ¶ 0016 (emphasis added).

The Examiner's allegation at pages 20-21 of the Office Action that "negotiated of the bit rate per symbol is performed which inherently indicates the size of the symbol and thus is interpreted as claimed negotiation" is incorrect. Moreover, as stated above in connection with claim 13, even if the "size of the symbol" was equivalent to Applicants' "number of information bits," which appears to be the Examiner's assertion, the negotiation of a bit rate per symbol will only result in a change of the rate of transmission of the "collection of bits," and would not affect the size of the transmission, as the Examiner also appears to assert.

Thus, the Examiner's proposed combination of *Le Bars* and *Kim* would only result in the negotiation of a data rate for a packet which includes TFCI bits of a static, predetermined length. The combination of *Le Bars* and *Kim* would not disclose or suggest, *inter alia*, "a transport format combination index (TFCI) size negotiated for the encoded information bits for transmission between the base station and the mobile unit," as recited in independent claim 19.

For at least this reason, Applicants submit that neither *Kim*, nor *Le Bars*, nor any combination thereof, teach or suggest all the elements of Applicants' independent claim 19.

### iii. *Kim*, *Le Bars*, and *Tan*

*Tan* also fails to cure the deficiencies set forth above, including the failure of *Kim* and *Le Bars* to disclose or suggest, *inter alia*, "a transport format combination index (TFCI) size negotiated for the encoded information bits for transmission between the base station and the mobile unit," as recited in independent claim 19. Indeed, the Examiner does not rely on *Tan* for this teaching.

Thus, for at least this reason, Applicants submit that neither *Kim*, nor *Le Bars*, nor *Tan*, nor any combination thereof, teach or suggest all the elements of Applicants' independent claim 19. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a), and allowance of independent claim 19.

### J. Claim 20

Claim 20 depends from independent claim 19 and thus requires a combination including, *inter alia*, "a transport format combination index (TFCI) size negotiated for the encoded information bits for transmission between the base station and the mobile unit." As discussed above, *Kim*, *Le Bars*, and *Tan* fail to disclose or suggest at least this element of claim 19.

In the rejection of claim 20, the Examiner alleges that *Lozano* teaches, for example, "negotiation of data rate from time to time . . . ." Office Action, p. 22. Despite this characterization, which Applicants do not concede, the reference fails to cure the deficiencies of *Kim*, *Le Bars*, and *Tan*, as discussed above. That is, *Lozano* also fails to teach or suggest at least "a transport format combination index (TFCI) size negotiated for the encoded information bits for transmission between the base station and the mobile unit," as recited in amended independent claim 19, from which claim 20 depends.

Accordingly, because none of *Kim*, *Le Bars*, *Tan,* and *Lozano* teach or suggest each and every recitation of claim 20, the rejection of this claim is legally deficient. Therefore, Applicants respectfully request reconsideration and withdrawal of the § 103(a) rejection, and allowance of claim 20.

### K. Claim 21

Claim 21 depends from independent claim 19 and thus requires a combination including, *inter alia*, "a transport format combination index (TFCI) size negotiated for the encoded information bits for transmission between the base station and the mobile unit." As discussed above, *Kim*, *Le Bars*, and *Tan* fail to disclose or suggest at least this element of claim 19.

In the rejection of claim 21, the Examiner alleges that *Müller* shows, for example, "communication between a base station and mobile station as a WCDMA implementation . . . ." Office Action, p. 23. Despite this characterization, which Applicants do not concede, *Müller* fails to cure the deficiencies of *Kim*, *Le Bars*, and *Tan*, as discussed above. That is, *Müller* also fails to teach or suggest at least "a transport format combination index (TFCI) size negotiated for the encoded information bits for transmission between the base station and the mobile unit," as recited in amended independent claim 19, from which claim 21 depends.

Accordingly, because none of *Kim*, *Le Bars*, *Tan*, and *Müller* teach or suggest each and every recitation of claim 21, the rejection of this claim is legally deficient. Therefore, Applicants respectfully request reconsideration and withdrawal of the § 103(a) rejection, and allowance of claim 21.

## III. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: April 7, 2008

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*--for--*

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